

EXHIBIT 7

In the Matter of

Case No. 18-cv-05775 (ERK)(TAM)

STAR AUTO SALES OF BAYSIDE, INC., et al.

v.

VOYNOW, BAYARD, WHYTE AND COMPANY LLP, et al.

Deposition of Hugh Whyte

Tuesday, January 31, 2023



The Little
Reporting
Company

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New York, NY 10018
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STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.
(d/b/a STAR TOYOTA OF BAYSIDE),
STAR AUTO SALES OF QUEENS, LLC
(d/b/a STAR SUBARU), STAR HYUNDAI
LLC (d/b/a STAR HYUNDAI), STAR
NISSAN, INC. (d/b/a STAR NISSAN),
METRO CHRYSLER PLYMOUTH INC. (d/b/a
STAR CHRYSLER JEEP DODGE) STAR AUTO
SALES OF QUEENS COUNTY LLC (d/b/a
STAR FIAT) and STAR AUTO SALES OF
QUEENS VILLAGE LLC (d/b/a STAR
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE and COMPANY
LLP, HUGH WHYTE, and RANDALL
FRANZEN,

Case No.
18-cv-05775
(ERK) (TAM)

Defendants.
-----x

January 31, 2023
10:41 a.m.

Deposition of HUGH WHYTE, taken by
Plaintiffs, pursuant to Notice, held at the
offices of Milman Labuda PLLC, 3000 Marcus
Avenue, Suite 3W8, Lake Success, New York,
before Lisa Hiesiger, a Shorthand Reporter
and Notary Public within and for the State
of New York.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

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14
15 Also Present:

16 JACQUELINE CUTILLO

17 ROBERT SEIBEL

18 RANDY FRANZEN

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STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

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2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between counsel for the respective parties hereto,
4 that the filing, sealing and certification of the
5 within deposition shall be and the same are hereby
6 waived;

7 IT IS FURTHER STIPULATED AND AGREED that all
8 objections, except as to form of the question, shall
9 be reserved to the time of the trial;

10 IT IS FURTHER STIPULATED AND AGREED that the
11 within deposition may be signed before any Notary
12 Public with the same force and effect as if signed and
13 sworn to before the Court.
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STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

4

1 Whyte

2 H U G H W H Y T E, having been first duly
3 sworn by Lisa Hiesiger, a Notary Public, was
4 called as a witness and testified as follows:

5 EXAMINATION BY MR. FELSEN:

6 Q. Good morning, Mr. Whyte.

7 A. Good morning.

8 Q. As you probably remember, my name is
9 Jamie Felsen.

10 A. Sure.

11 Q. I'm one of the attorneys for the
12 various Star entities. For simplicity purposes
13 I'm just going to refer to all of them as Star
14 today, do you understand?

15 A. Yes.

16 Q. We're here today with respect to the
17 lawsuit that Star commenced against Voynow,
18 Bayard, Whyte and Company LLP, yourself
19 personally and Randall Franzen personally. I'll
20 be referring to Voynow, Bayard, Whyte and Company
21 LLP simply as Voynow, do you understand that?

22 A. Yes.

23 Q. Your testimony today is subject to
24 the same oath and penalty of perjury as if you
25 were testifying in court. Do you understand

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

40

1 Whyte

2 the next step with respect to conveying to the
3 employees what tasks they're going to be
4 responsible for?

5 A. It depends what level they are.
6 Usually if they're right out of college they
7 understand accounting because they're all college
8 graduates, but we might assign them to do the
9 fixed asset analysis or something along those
10 lines, but any questions they have when they're
11 in the field, they just have to ask their
12 supervisor.

13 Q. And when you say when they're out in
14 the field, what are you referring to?

15 A. When they're on site, the client's
16 location.

17 Q. Are field visits required for every
18 client that Voynow performed services for?

19 MS. FITZGERALD: Object to form.

20 You can answer.

21 A. We have a very sophisticated tax
22 practice. The clients that we have are large and
23 if it's a tax engagement, because most of these
24 clients have flow-through entities, it's an
25 enormous task just to go up to the client and get

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

41

1 Whyte

2 all the flow-through numbers so that we can
3 prepare the quarterly estimates for the client.

4 And to keep your arms around that,
5 you're going to need to go up there to make sure
6 that you have the right numbers. And the other
7 thing that we try to do even on the tax
8 engagement is we look because with different
9 rules you can have an allowance for doubtful
10 accounts for your books, but when you go to do
11 the tax return, the only way you can get a
12 deduction is if you directly write off a
13 receivable.

14 So we would talk to the controller
15 and say, hey, look, we're coming up on year-end,
16 I'm sure the dealers don't want to pay tax on
17 stuff that's not collectible so we need to have
18 you go through your records to see if there's any
19 direct write-offs. And then we get ready for
20 year-end and we say, hey, you know, there are
21 certain things that are only going to be done for
22 the tax returns so what we'd like to do is when
23 you run your final statement, which is the 12th
24 statement, then we'll give you the tax entries
25 that you can put on before you get the final

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

83

1 Whyte

2 A. Yes.

3 Q. And Voynow hasn't produced any,
4 correct?

5 A. I don't know that there are any.

6 Q. So Voynow has performed services for
7 Star without a signed engagement letter, correct?

8 A. You don't need an engagement letter.
9 It's tax services.

10 Q. Isn't it your testimony that it's a
11 matter of practice at Voynow to get a signed
12 engagement letter for all clients?

13 A. Yes, but it's not required for tax
14 engagement.

15 Q. But your testimony is that you have
16 performed services for clients without a written
17 engagement letter, correct?

18 A. It depends how far back we're
19 talking. Currently under our --

20 MS. FITZGERALD: He just asked...

21 Q. What services is a signed engagement
22 letter required for?

23 A. For a review engagement.

24 MS. FITZGERALD: That Voynow does,
25 right, that was your question?

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

84

1 Whyte

2 MR. FELSEN: Yes.

3 Q. What is a review engagement?

4 A. That's if we're preparing, like I
5 said earlier, that OCBOA financial statement.

6 Q. What other engagements require a
7 signed engagement letter?

8 A. An audit, but we don't do any audits.

9 Q. So a financial statement is the only
10 service that Voynow provides to clients that
11 requires a signed engagement letter?

12 MS. FITZGERALD: Reviewed financial
13 statement, that was your -- that's what
14 you were asking him, right?

15 MR. FELSEN: He referenced an OCBOA
16 financial statement.

17 A. That is a reviewed other
18 comprehensive basis of accounting which is a tax
19 basis review report. OCBOA, it's some other name
20 now but it used to be OCBOA.

21 Q. So other than that, there's no other
22 services that Voynow performs for its clients
23 that requires a written and signed engagement
24 letter?

25 A. Well, if they ask us for a special

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

85

1 Whyte

2 project, we'll write an engagement letter. Like
3 recently a client asked us to do due diligence on
4 a prospective purchase of a dealership, so we had
5 an engagement letter.

6 Q. What are some other special projects
7 that you would have a signed engagement letter
8 for?

9 A. You'd really have to ask the partners
10 in charge. Like I said, I haven't been in the
11 field so long, I don't get these requests, I'm
12 not the person that gets them.

13 Q. Are you aware of any special projects
14 that Voynow performed for Star?

15 A. I know after Vivian was fired that
16 they requested that we help train Jackie, that's
17 what I'm aware of.

18 Q. Anything else?

19 A. That's all I remember.

20 Q. Is it Voynow's practice when it has a
21 tax engagement to not have a written engagement
22 letter?

23 A. The practice currently, this might be
24 after '17, currently is to get an engagement
25 letter, currently.

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

119

1 Whyte

2 A. No, it could be any dealership.

3 Q. Are you familiar with interim visits?

4 A. Yes.

5 Q. What is an interim visit?

6 A. It's an interim tax visit, as I
7 explained, to keep your finger on the pulse is as
8 to what the dealership is doing financially so
9 that you can adjust your flow-through estimates.
10 Remember all these businesses are flowing through
11 to the individual tax return, and the tax is
12 calculated at the individual level.

13 Q. So when you previously were using the
14 term "site visits," is that the same as an
15 interim visit?

16 A. It could be.

17 Q. Are there any distinctions between a
18 site visit and an interim visit?

19 A. We normally call them interim visit
20 tax visits, so that's on site. But it could be
21 that there's an interim visit that's done from
22 the office if we have access to the computer
23 system. Not all dealers give us access to the
24 computer system.

25 Q. So if a tax return is filed timely

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

129

1 Whyte

2 Q. But not during the entire period that
3 we've been discussing, correct?

4 A. No, not the entire period, but they
5 had financials at one time.

6 Q. I think you testified earlier that
7 Reynolds had connected you with Star, is that
8 correct?

9 A. Yeah, it was a Reynolds referral, I
10 believe to the Koufakises, and the one they were
11 referring was Randy because he was Reynolds
12 literate, put it that way.

13 Q. I think you said that Star wanted
14 somebody with Reynolds expertise, is that
15 correct?

16 A. The original engagement they wanted
17 somebody with Reynolds experience, and they also
18 needed somebody to fix a messy IRS audit that
19 apparently we were told that the previous
20 accountant had f'd it all up because he was so
21 arrogant, the IRS came up with a \$750,000 IRS
22 settlement so they wanted us to focus on fixing
23 the IRS audit, and they also wanted to know about
24 the Reynolds system, how they could use that to
25 streamline their accounting system. So we went

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

131

1 Whyte

2 opposed to an accounting firm?

3 A. There's like a missing link between
4 Reynolds and the accountants, so the accountant
5 has a better understanding of what the dealer is
6 looking for. So normally they'll have a CPA or
7 somebody make the connection.

8 Q. Isn't streamlining records an
9 internal control?

10 MS. FITZGERALD: Object to form.

11 A. It has nothing to do with internal
12 control.

13 Q. So Reynolds connected you with the
14 Koufakises?

15 A. Yes.

16 Q. And were you involved initially in
17 getting Star to retain Voynow?

18 A. My recollection is myself and Bob
19 Bayard initially went up to meet with Star. What
20 we were told was we have a messy IRS audit. We
21 need you to focus on that. They're coming up
22 with an assessment of three-quarters of a million
23 dollars.

24 So we went in there and we got the
25 IRS under control, we reduced the penalties and

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

132

1 Whyte

2 interest and reduced the liability. It had
3 something to do with the LIFO valuation, and at
4 the time Mike or whoever told us that's what we
5 need you to focus on. We have an internal audit
6 girl, her name is Bing, and you'll meet her when
7 you come up here, and the next thing I want you
8 to do is whoever is going to be spearheading the
9 Reynolds and Reynolds, send them, then I think
10 Randy went up with somebody else for the second
11 meeting.

12 Q. So that was the only meeting that you
13 went to?

14 A. That's it.

15 Q. At that meeting did you discuss with
16 the principals of Star the different types of
17 services that Voynow could provide?

18 A. We discussed what their concerns were
19 and it really was they want us to focus on that
20 IRS problem.

21 Q. And Randy was not present at that
22 initial meeting?

23 A. No, it was just me and Bob Bayard for
24 that first one.

25 Q. Who did you meet with at that

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

158

1 Whyte

2 Q. So just so I understand, so there's
3 two different tasks we're talking about, there's
4 tax preparation and then there's also the interim
5 visits. Is the tax preparation billed on a flat
6 fee or is it billed based on an hourly fee?

7 A. Hourly.

8 Q. So both tax prep work and interim
9 visits are billed hourly?

10 A. Right.

11 Q. That was the case for Star?

12 A. Yes.

13 Q. What about a financial statement
14 review engagement, is that billed hourly as well?

15 A. Yes.

16 Q. Are all Voynow dealership clients
17 that have a tax engagement billed on a monthly
18 basis?

19 A. All the dealerships are billed a
20 monthly retainer.

21 MR. FELSEN: We're going to mark this
22 as 80.

23 (Exhibit 80, Compilation of invoices,
24 was so marked for identification, as of
25 this date.)

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

159

1 Whyte

2 Q. I'm showing you what we have marked
3 as Exhibit 80.

4 A. Okay.

5 Q. This is a compilation of invoices?

6 A. Yes.

7 Q. So the first few pages are for Star
8 Hyundai for monthly retainers for \$500?

9 A. Yes.

10 Q. Correct?

11 A. Yes.

12 Q. On the fourth page, Star 00017169, is
13 an invoice that doesn't reference the monthly
14 retainer, it says accounting services as
15 requested, then it says "Progress billing for
16 work completed on December 31, 2015, closing of
17 the books and preparation of partnership tax
18 returns." There's a bill there for 6500. This
19 is from March 4th, 2016.

20 Why was this -- you had been billing
21 for 500 and now there's a substantial increase of
22 6500. What is the distinction between the prior
23 invoices and this invoice?

24 A. The 6500 is a progress bill for the
25 work that we completed up to that point. The

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

160

1 Whyte

2 retainer is strictly just to get some money in
3 advance just so we have something in the firm
4 before we start the work.

5 Then we have a final bill here for
6 2965, so the total bill would be 2965, 6500 and
7 then the retainers. Those retainers come off
8 before these bills are billed.

9 Q. If a client isn't given a written
10 retainer agreement, how would they know what
11 rates they're being billed at?

12 A. They would ask us.

13 Q. Did you ever have any discussion with
14 Star about what the rates are?

15 A. No.

16 Q. Do you know whether any of your
17 partners did?

18 A. I don't know.

19 Q. Let's turn to, a couple of pages, to
20 Star 00017190, it's like two pages after the one
21 we just looked at. March 1, 2016 for Star
22 Toyota.

23 A. I got it.

24 Q. So there was an invoice issued on
25 that date for a thousand dollars for the monthly